fessor Durfee—Equity, Mortgages, Suretyship and Quasi Contracts; Professor Waite—Criminal Law, Sales, Bills and Notes, and Patent Law; Professor Dickinson—Trusts and Public International Law; Professor Grismore—Contracts.

During the year Mr. James A. Veasey, General Counsel of The Carter Oil Company, will deliver a special series of lectures on Oil and Gas Law. These lectures will appear in the Review.

THE SCINTILLA RULE OF EVIDENCE.—In analyzing the reasons why "trial by jury has declined to such an extent that it has come in many cases to be an avowed maxim of professional action,—a good case is for the court; a bad case is for the jury,"—JUDGE DILLON, in his LAWS AND JURISPRUDENCE, pp. 130-2, credits "the false principle known as the scintilla doctrine" with a large degree of responsibility.

The scintilla rule is essentially a medieval product. Scholasticism centered in logic, and the schoolmen contemplated everything in the glass of Aristotelian formulae. The syllogism was the great weapon of logical conquest, and the syllogism was deductive. It required a universal for its starting point. It exactly reversed the modern notion of looking to experience for data on which to build up general rules. It started with the general rule, which it derived abstractly. Once derived, it became, like the bed of Procrustes, the standard which experience must be forcibly made to fit. The doctor of laws in determining what cases should go to the jury, and the doctor of theology in deciding what souls should be saved, would apply an identical principle—conformity to a preconception. The fact that in either case the result might be unreasonable was of no consequence. It was heresy to deny the premise and folly to deny the conclusion.

The preconception on which the scintilla rule rests is that all questions of fact must go to the jury. And the reason for this is that it is a maxim of the common law that *"ad quaestionem facti non respondent judices."* The scholastic mind is satisfied with this reason. It is based on authority; it keeps practice subordinate to theory and thus maintains the medieval conception of the ascendency of the universal over the individual; it offers the infallible test of logic instead of the uncertain test of experience.

The essence of the scintilla rule is the total elmination of the question of the weight of the evidence from the consideration of the court. All relevant evidence should look alike, for the court, endowed only with a vision for the universal, can see in all evidence only a question of relevancy. It stands indifferent between the most convincing evidence on one side and the weight of a hair on the other. The court, being the instrumentality of logic, not common sense, is not expected or allowed to apply any rule but the rule of logic. Hence nothing is judicially absurd unless it is illogical, no matter how absurd it may be in its practical results.

The scintilla rule is seldom followed by modern courts. THOMPSON says it is "hardly mentioned by any court but to be repudiated." TRIALS, Sec.

2246, note. Here and there a court has adhered to it literally. *Holtzclaw v. Moore* (Tex. Ct. of Civ. App.) 192 S. W. 582; *Chicago and Erie RR. Co.* v. *Hamerick*, 50 Ind. App. 425. Kentucky adheres to it but admits its absurdity. *Farmers' Bank* v. *Birk*, 179 Ky. 761. In South Carolina the rule is followed in name but repudiated in substance by defining a "scintilla" to mean such evidence as is sufficient to warrant a reasonable jury in rendering a verdict upon it. *Dutton* v. *Atl. Coast Line RR. Co.*, 104 S. C. 16.

Most courts lay down some rule as to the *weight* of evidence which will justify sending a case to the jury, and while the wording of the rules varies widely, in substance they all amount to this, that the evidence must have sufficient weight to make a verdict in accordance with it reasonable. Most commonly it is said that the case is for the jury if *reasonable minds* could differ in regard to it. *Virgilio* v. *Walker*, 254 Pa. 241; *Carolina, C. & O. Ry. Co.* v. *Stroup*, 239 Fed. 75; *Aiken v. Atl. Life Ins. Co.* (N. C. 1917) 92 S. E. 184; *Bank of Cortland* v. *Maxey*, 102 Neb. 20; *Conway v. Monidah Trust*, 51 Mont. 113; *Sartain* v. *Walker* (Okl. 1916) 159 Pac. 1096; *Brown* v. *Thomas*, 120 Va. 763. Some cases say the test is whether the jury could find the fact sought to be proved without acting *unreasonably in the eye of the law. Wilcox* v. *Internat. Harv. Co.*, 278 *Ill.* 465; *Stewart* v. *Ill. Cent. RR. Co.*, 201 *Ill.* App. 187. Some require the evidence to be such that the jury might *lawfully* find in accordance with it. *Thiesen* v. *Gulf, F. & A. Ry. Co.* (Fla., 1918), 78 So. 491. Some say the evidence must be *sufficient to sustain* the case. *Cromwell* v. *Chance Marine Const. Co.*, 131 Md. 105. Some courts send the case to the jury if there is any *substantial* evidence. *Treble* v. *Am. Steel Foundries* (Mo. 1916) 185 S. W. 179. Other courts say the evidence must be such as to *warrant* the jury in finding a verdict, *Zeigrist* v. *Speer*, 29 Del. 437; *McAlinden* v. *St. Maries Hospital Assn.*, 28 Ida. 657; or must *authorize* the jury to so find, *Moore* v. *Dixie Ins. Co.*, 19 Ga. App. 800. In New York a verdict may be directed when the evidence is such that a contrary verdict *must*, not merely *may*, be set aside. *Getty* v. *Williams Silver Co.*, 221 N. Y. 34. In the federal courts and in some states the rule is that if the evidence is of so conclusive a character that the court would *feel bound to set aside* a verdict in opposition to it, then a verdict should be directed. *Canadian Northern Ry. Co.* v. *Senske*, 201 Fed. 637; *Kalish* v. *White*, 36 Cal. App. 604; *Meyer* v. *Houck*, 85 Iowa, 319; *Baxter* v. *Brandenburg*, 137 Minn. 259.

Such being the principle underlying the scintilla rule and the state of the law regarding it, it is rather interesting and surprising to find the supreme court of Ohio, in an opinion published in September of the present year, standing pat on the scintilla rule in its crudest form. In *Clark* v. *McFarland* (Ohio, 1918) 124 N. E. 164, it appeared that a will had been admitted to probate by the order of the proper court. This order was by statute declared to be *prima facie* evidence of the due execution and validity of the will. A contest was then brought, and since the contestant failed to present any substantial evidence of invalidity, the trial court directed a verdict for the defendant. On appeal the judgment was reversed on the ground that a mere scintilla of evidence was enough to send the case to the jury even in the

face of an order of probate declared by statute to be *prima facie* proof of validity. Not only was the case on its merits a very extreme one in which to apply the rule, but two prior decisions of the Court of Appeals of Ohio were thereby overruled. A dissenting opinion by JONES, J., in which no other judge concurred, argued that the statute referred to made the scintilla rule inapplicable to will contests, but did not question the propriety of the rule as a general principle of law. Evidently the Ohio Supreme Court feels irrevocably committed to this all but obsolete doctrine, and a statute will probably be necessary to get rid of it. E. R. S.

JUVENILE COURTS AND PRIVILEGED COMMUNICATIONS. — In the case of *Lindsey* v. *People,* (Colo., 1919) 181 Pac. 531, the Supreme Court of Colorado has held that Judge Lindsey of the Juvenile Court of Denver could not refuse to testify as to a communication made to him by a child who was at the time of the communication suspected of crime and against whom proceedings were later taken in the Juvenile Court. The decision was by a vote of four to three, and a vigorous dissenting opinion was written by Justice Bailey and concurred in by Justices Scott and Allen.

The case arose under the following circumstances: a man had been killed and his wife was suspected of murdering him; their twelve-year-old son was also under suspicion. The boy went to Judge Lindsey's chambers in the Juvenile Court to consult the Judge about the case and, after being assured by the Judge that any statement made to the latter would be confidential and that no disclosure of the same could be forced from the Judge, the boy made a statement as to the circumstances of the killing of his father. The wife of the deceased was later tried for the murder of her husband, and the boy testified in her behalf. The prosecution then sought to show that the boy had made a statement to Judge Lindsey which was inconsistent with his testimony at the trial, and called upon the latter to testify as to the statement made to him by the boy under the circumstances above detailed. Judge Lindsey declined to disclose the information he had thus received, on the ground that the communication was privileged; he persisted in his refusal after the trial court had ordered him to answer, and was found guilty of contempt of court and fined. The Supreme Court upheld the judgment of the court below.

It is admitted in both the prevailing and dissenting opinions that the case is one of first inpression; the dissenting opinion justifies the claim of privilege by pointing out analogies to other and similar situations in which the claim is clearly recognized; the majority opinion denies the privilege because no clear and unmistakable basis for it is contained in the various sections of the Colorado Statutes cited in the brief of the plaintiff in error. It is interesting that both opinions, in discussing the general question of privilege, rely on Wigmore on Evidence, § 2285, where the learned author states the rule as follows: "(1) The communications must originate in a confidence that they will not be disclosed; (2) this element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties; (3)